LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

Supreme Court, U.S.
FILED
AUG 9 1971
E. ROBERT SEAVER, CLERK

October Term, 1971
No. 71-64

LOUIS C. STUKENBORG, HAROLD V. UTTERBACK and ASSOCIATED AIRCRAFT INDUSTRIES, INC.,

Petitioners,

vs.

TELEDYNE, INC.,

Respondent.

Respondent's Opposition to Petition for Writ of Certiorari.

WILLIAM H. PAVITT, JR.,
4262 Wilshire Boulevard,
Los Angeles, Calif. 90010,
Attorney for Respondent.

Of Counsel:
GEORGE F. SMYTH,
4262 Wilshire Boulevard,
Los Angeles, Calif. 90010,
(213) 938-6251.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

	Page
Questions Presented	1
Statutes Involved	2
Statement of the Case	2
Argument	6
A. Summary of Petitioners' Arguments	6
B. Answer to Petitioners' Contentions	7
Conclusion	14
Appendix I. Selected Sections From the Patent Codification Act of 1952 (Title 35 United States Code)	App. p. 1

TABLE OF AUTHORITIES CITED

Cases	Page
Bassick Mfg. Co. v. R. M. Hollingshead, 298 U.S. 415, 56 S.Ct. 787	2, 6, 10, 12, 13
Blonder-Tongue Laboratories, Inc. v. Univ. of Ill., 91 S.Ct. 1434	2, 6, 8, 9
Damrow Bros. Co. v. Stoelting Bros. Co., 295 Fed. 492	14
Graham v. John Deere Co., 383 U.S. 1, 86 S.Ct. 684	2, 6, 10, 11, 12
Lincoln Eng. Co. v. Stewart-Warner Corp., 303 U.S. 545, 58 S.Ct. 662	2, 6, 10, 12, 13
Richards v. Chase Elevator Co., 158 U.S. 299, 15 S.Ct. 931	14
Ryan Distrib. Corp. v. Caley, 147 F.2d 138, cert. denied, 325 U.S. 859	14
United States v. Univis Co., 316 U.S. 241, 62 S. Ct. 1088	11
Rules	
Federal Rules of Civil Procedure, Rule 23	9
Statutes	
United States Code, Title 35, Sec. 101	2, 12
United States Code, Title 35, Sec. 102	2
United States Code, Title 35, Sec. 102(a)	12
United States Code, Title 35, Sec. 102(b)	12
United States Code, Title 35, Sec. 102(e)	12
United States Code, Title 35, Sec. 103	2, 6, 10, 12
United States Code, Title 35, Sec. 112	2, 12
United States Code, Title 35, Sec. 271	2
United States Code, Title 35, Sec. 282	2, 13
Textbook	
31A Corpus Juris Secundum, p. 195	13

IN THE

Supreme Court of the United States

October Term, 1971
No. 71-64

LOUIS C. STUKENBORG, HAROLD V. UTTERBACK and ASSOCIATED AIRCRAFT INDUSTRIES, INC.,

Petitioners,

vs.

TELEDYNE, INC.,

Respondent.

Respondent's Opposition to Petition for Writ of Certiorari.

Questions Presented.

Instead of the questions set forth on pages 1 and 2 of the Petition, respondent submits that the following are the questions which are really presented:

1. Did the Court of Appeals properly affirm the summary judgment in favor of respondent upon the basis of the undisputed evidence presented in support of respondent's motion for summary judgment?

2. Does the fact that petitioners had previously secured a judgment upholding the same patent in the United States Court of Claims in a suit to which respondent was in no way a party, and on different facts from those presented in support or respondent's motion for summary judgment, require this Court to grant the petition and resolve the apparent conflict

between such Court of Claims judgment and the judgment in the instant case.

3. Should this Court's recent holding in *Blonder-Tongue Laboratories, Inc. v. Univ. of Ill.*, 91 S.Ct. 1434 (1971) now be extended to estop one who was *not* a party to a prior litigation in which a patent was held valid from asserting the invalidity of the same patent in a later infringement suit brought against such party?

4. Did this Court by its decision in *Graham v. John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684 (1966), intend to hold that its test of "obviousness" under §103 of the 1952 Patent Act was the "sole and exclusive statutory test of patentability" to be applied by the Courts, as urged by petitioners, so that decisions such as *Lincoln Eng. Co. v. Stewart-Warner Corp.*, 303 U.S. 545, 58 S.Ct. 662 and *Bassick Mfg. Co. v. R. M. Hollingshead*, 298 U.S. 415, 56 S.Ct. 787, prohibiting "overclaiming" of old combinations where only one element thereof was improved, must be considered to have been overruled?

5. Was the presumption of validity properly held by the Courts below to have been overcome?

Statutes Involved.

The Petition filed herein involves the construction and interpretation of the Sections 101, 102, 103, 112, 271 and 282 of the Patent Codification Act of 1952 (35 United States Code). These sections are quoted in full in Appendix 1 to this Brief.

Statement of the Case.

The Statement of the Case in the Petition is largely devoted to an explanation of what the United States

Court of Claims held in a prior suit which petitioners had brought against the United States, and to which suit, respondent was not a party.

Contrary to petitioners' statement that respondent moved for summary judgment "not long after the commencement of the instant action in August, 1967", the motion was first noticed for hearing June 10, 1968, but not argued until September 30, 1968. Before the motion was so first noticed for hearing, respondent's counsel had taken the depositions of several persons in Memphis, Tennessee, including that of one David Nunnally, president and principal officer of the patentee's exclusive licensee and the person who, since about 1952, had been principally responsible for securing the patent-in-suit and for promoting the use and acceptance of turnbuckles of the type shown in the '408 patent-in-suit. As a part of this discovery, respondent's counsel examined hundreds of documents and interrogated Mr. Nunnally concerning them. In addition, before the motion was argued before the District Court, respondent served petitioners with, and received written responses to, a number of written interrogatories and requests for admissions. Petitioners also filed numerous affidavits and a memorandum in opposition to respondent's motion for partial summary judgment.

Respondent's said motion was based upon the facts as developed by such discovery from petitioners' own records, testimony and written responses, including principally the testimony of Mr. Nunnally who was the person most knowledgeable of the facts which had occurred since 1952. Briefly, these facts were as follows:

The first patent (No. 2,580,482) issued January 1, 1952 to Messrs. Stukenborg and Utterbach on an ap-

plication filed June 12, 1945 and disclosed* and claimed the turnbuckle combination of a barrel and two end pieces to be threadedly interconnected and the threading of each of which items was longitudinally slotted to receive one end of a wire locking clip. The other end of the clip passed through a transverse hole in the center of the barrel to prevent the clip from being shaken loose.

A partnership by the name of Associated Aircraft Industries and operated by Mr. Nunnally obtained an exclusive license under this '482 patent and with respect to later Stukenborg turnbuckle inventions, and has sublicensed a few manufacturers to make and sell under the Stukenborg patents. Turnbuckles made according to this '482 were not considered acceptable by the aircraft industry so that between 1952 and 1955 Mr. Stukenborg made many modifications of the components—principally of the wire clips—and Mr. Nunnally actively engaged in having the products of Stukenborg's experiments tested by airlines, airplane manufacturers and Governmental agencies.

On December 10, 1953 an application was filed which resulted in the issue of Patent No. 2,843,407, on July 15, 1958. Certain of the clips, as well as the barrels and end pieces shown in the drawing of that patent (See: p. A36 of the Petition) were admitted by Mr. Nunnally to have been sold during 1953 and 1954.

Sometime around May, 1955, clips of the type shown in the drawings** of the patent-in-suit (No. 2,843,408, issued also on July 15, 1958), were devised and, over the next few months, were at least distributed, if not sold. Through Mr. Nunnally's diligent efforts, these

*See: Appendix page A-35 of the Petition.
**See: page A-37 of the Appendix to the Petition.

clips were the ones which were finally accepted for use with the slotted barrels and end pieces by both the aircraft industry and the military services. In or about 1962, the latter made them a Military Standard.

Respondent does not make any clips, but has always bought them from a sublicensee of Associated Aircraft Industries or its corporate successor, or from one of such sublicensee's customers. Respondent does make and has made slotted barrels and end pieces and sells them to aircraft companies and other customers.

Petitioners brought suit against respondent for contributory infringement and inducement of infringement of the '408 patent. On respondent's motion for partial summary judgment, petitioners' complaint for such infringement was dismissed and such dismissal affirmed by the Court of Appeals for the Ninth Circuit. The opinions below are found on pages A1 through A33 of the Petition.

ARGUMENT.

A. Summary of Petitioners' Arguments.

Petitioners' principal basis for seeking certiorari, as was their principal argument in the courts below, is that they had secured a judgment favorable to their patent-in-suit in the United States Court of Claims, allegedly "following a full and fair trial on the merits."

Petitioners would then seek to parlay this Court of Claims adjudication into an estoppel against respondent by a judicial leapfrogging from this Court's recent holding in the *Blonder-Tongue* case[1] to create an estoppel against respondent on the basis of what petitioners had persuaded the Court of Claims to hold in their suit against the United States Government. Thus, although respondent was never a party to the Court of Claims litigation, petitioners would have respondent bound by its result.

Petitioners also seek to have this Court hold that its decision in *Graham v. John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684 (1966) on what constituted "obviousness" under §103 of 35 U.S.C., was intended to overrule the earlier cases exemplified by *Lincoln Engineering Co. v. Stewart-Warner Corp.*, 303 U.S. 545, 58 S.Ct. 662 and *Bassick Mfg. Co. v. R. M. Hollingshead*, 298 U.S. 415, 56 S.Ct. 787. These latter decisions established the principle of patent law that improving one element of a combination did not entitle the improver to repatent the entire combination.

Lastly, petitioners urge that the Courts below did not give proper weight to the statutory presumption of validity.

---

[1] *Blonder-Tongue Labs. Inc. v. Univ. of Ill.*, 91 S.Ct. 1434.

B. Answer to Petitioners' Contentions.

The grounds for petitioners' seeking certiorari may be answered simply and decisively.

1. The Court of Claims' trial may have been "full" in one sense, but it did not involve any consideration of certain important evidence which respondent uncovered through the deposition of Mr. Nunnally, the document discovery from petitioners' own files and petitioners' responses to respondent's written interrogatories and requests for admissions. Through this discovery, it was indisputably established that certain of the clip configurations shown in Stukenborg patent No. 2,843,-407 (See: page A-36 to the Petition for Certiorari) were sold and on sale and were used more than one (1) year before the filing of the application for the Stukenborg patent No. 2,843,408 in suit. As such, they were prior art to the latter patent.

Also, for some strange reason, the Court of Claims Commissioner, in his decision, later adopted by the Court of Claims, did not discuss Stukenborg's earlier patent No. 2,580,482 as prior art to, and bearing upon the validity of, the patent-in-suit, nor did he discuss the Stukenborg No. 2,843, 407 patent (See: pages A-30 and A-31 of the Petition, where the District Court explained why he did not consider the Court of Claims' decision binding; also see 372 F.2d 487 at 502).

In addition, the Court of Claims made no careful analysis of the claims of the patent-in-suit as did the District Court (See: pages A-11 to A-18 of the Appendix to the Petition).

The Court of Appeals stated as to the Court of Claims' decision:

> "* * * We simply disagree with that determination."

Respondent submits that because of its failure to consider the most pertinent prior art or to analyze the claims in the manner done by the District Court in the case at Bar, or to consider the matter of the '408 patent's "overclaiming" the alleged invention, the Court of Claims' decision should not be considered so authoritative as to require this Court to take up and review on certiorari the specific adjudication by the courts below respecting the patent-in-suit. Viewed against the admitted prior art, the patent-in-suit will be found to be directed only to the particular way that a piece of wire, constituting a locking clip, is twisted to lock an old combination of a slotted turnbuckle barrel and two slotted end pieces previously locked by a different configuration of wire clip.

2. This Court in the *Blonder-Tongue* case, *supra*, page 2, in effect, held that where a *patentee* had one full and fair hearing in one District Court on the validity of his patent and the decision of the District Court (affirmed on appeal) was adverse to the patent, *such patentee* should be collaterally estopped to contend for the validity of the same patent in another suit against another party—in the absence of a showing of substantial new evidence which was and could have been considered by the Court in the prior case. The principle here is that since *such patentee* has had his "day in court" and lost, he should not be permitted to seek other days in court against other parties on the same validity issue and trial evidence.

Petitioners, however, would now have this Court hold that where a patentee succeeds in getting an adjudication *favorable* to his patent in any court, and irrespective of how well the suit was defended, all persons subsequently sued for infringement of the same patent

should be held estopped to contest the validity of such patent even though they have never had their "day in court" on such issue.

Merely to state the proposition is to expose its outrageousness.

The idea of an *in rem* patent adjudication was proposed in §XXIII of the Report of the President's Commission on the Patent System in 1966, and was provided for in the Patent Reform Bill submitted to the Congress to implement that Report in early 1967. However, the extent of that proposal was only that a patentee who had his "day in court" and thereby had his patent held invalid, could not thereafter sue on the same patent.

Although such a legislative proposal was never enacted, it is now the effect of the *Blonder-Tongue* decision of this Court. No one, however, has ever seriously proposed that a patentee, having had his patent sustained against one party, could later estop some other person, not a party to the earlier litigation, from attacking the validity of the patent.

Among the possibilities of such a proposal would be that "friendly" suits could be conducted to establish patent validity and thereby later estop true and important adversaries from having their "day in court" on the validity question.

At the present time, a class action under Rule 23 of the Federal Rules of Civil Procedure, with notice and opportunity to all who may be concerned to defend against a charge of patent infringement based upon an assertedly valid patent, is as far as the courts have gone to provide any type of *in rem* adjudication in favor of a patent. At least in such an action each mem-

ber of the class is given an opportunity to be heard or adequately represented before an estoppel to contest the validity of a patent is imposed upon him. Respondent's prior Court of Claims' suit was not any such class action.

In any event, as pointed out *supra*, pages 3-5, in the courts below, respondent had produced in the District Court substantial new evidence which was not available to, or considered by, the Court of Claims. In this situation, no estoppel should arise even under petitioners' radical proposal suggested by them for adoption by this Court.

3. Petitioners' contention to the effect that the decision of this Court in *Graham v. John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684 (1966) established a solitary principle of patentability and abolished all other previously judicially declared rules of patent law, irrespective of their relationship to the issue of obviousness under Section 103 of Title 35, borders on the bizarre.

Nothing in the legislative history of the Patent Codification Act of 1952 suggested any intention on the part of Congress to repudiate the sound principle of patent law established by this Court in the *Lincoln Engineering* and *Bassick* cases, *supra*, page 2. Nor did that legislative history, nor does any provision of that Act, suggest that Congress intended to authorize anyone to secure an extension of patent protection of all the elements of a combination beyond the 17 years of patenting of that combination by:

(a) improving *one element* of the combination;

(b) repatenting the whole combination with the improved element; and

(c) asserting that a person making any of the old and unimproved elements of that combination is guilty of contributory infringement or inducement of infringement of the patent on such combination.

Yet, that is the precise situation in the present case. Respondent has only made[2] and sold turnbuckle barrels and end pieces of the types disclosed in the 1952 '482 Stuckenborg *et al.* patent. That patent expired January 1, 1969. Notwithstanding this fact, petitioners in the present action have sought to charge respondent with contributory infringement and inducement of infringement of their 1958 '408 patent on the basis of respondent's having sold the same slotted barrels and end pieces disclosed in the '482 expired patent. Petitioners have made this charge because these old items are also claimed as elements in what respondents assert are claims to *the whole combination* of the barrel, end pieces and new form of locking clips.[3]

Common sense dictates that such an effort to extend the patent monopoly on the same elements of the old patented combination must fail. Neither the provisions of the 1952 Act nor this Court's decision in the *John Deere* case, *supra*, should be construed to require any such result which flies so blindly in the face of common sense.

---

[2]Respondent also purchased some of the '408 type clips made and sold by petitioners' sublicensee, which, however, were thereby freed of the patent monoploy. (See: *United States v. Univis Co.*, 316 U.S. 241, 62 S.Ct. 1088).

[3]The District Court in a careful analysis of the '408 patent claims held that all of them were directed only to the improved clip, so that respondent did not infringe such claims (See: pages A-VI - A-18 of the Appendix to the Petition).

The simple legalistic answer to Petitioners' legalistic contention is that either (i) a patent on the *entire combination* with the new improved element must always be obvious *as a matter of law* in view of the teaching of the prior combination patent; or (ii) the combination of the old elements with the improved element, *as a combination,* is always anticipated by the prior patent under §102 (a), (b) or (e) or does not qualify as "novel" under §101 of the Patent Act. In other words, the *combination,* as such, is *not "novel"* and could not properly be claimed as the invention. That was the effect of the *Lincoln Engineering* and *Bassick* cases, *supra.*

This Court's opinion in the *John Deere* case, *supra,* in its opening statement referred to "the sole statutory test since the Patent Act of 1793" of novelty and utility prior to the 1952 Act, and the "*addition*" by §103 of the latter Act of the test of "obviousness" (See: 383 U.S. 1, 3; also see 383 U.S. 1, 12-17.) This Court held that §103 "was intended merely as a codification of judicial precedents embracing the Hotchkiss condition" *i.e.,* that something more was needed for patentability than novelty and utility, viz. non-obviousness (383 U.S. 1; 17).

The *John Deere* opinion did not repudiate the previous test of "novelty and utility" for any "sole and exclusive test of patentability" in the form of "obviousness", as petitioners assert (See: Petition, p. 8); nor did it even mention the *Lincoln Engineering* and *Bassick decisions.*

Respondent submits that one still cannot repatent an old combination by improving a single element thereof, and that "overclaiming" is not permitted under §112 of the 1952 Act.

4. Petitioners' contention that the Court of Appeals failed to give proper effect to the presumption of validity provided for in §282 of 35 United States Code, particularly as that presumption is allegedly reinforced by the prior Court of Claims' decision, appears to assume that the Court of Appeals premised its holding of invalidity of the '408 patent on "obviousness" in view of the prior art. That is not, however, the Court of Appeals' holding, in contrast to what the District Court had held in its well-reasoned opinion.

The Court of Appeals avoided the path of the detailed and careful analysis of the issues taken by the District Court. Instead, it looked at petitioners' dilemma and said, in effect, that if the claims in suit are "*clip*" claims, there could be no infringement because respondent makes no clips but only sells those purchased from licensees of the patent; on the other hand, if such claims are *combination* claims, they are invalid for overclaiming under *Lincoln Engineering* and *Bassick, supra*. This latter is a legal conclusion which follows from the admitted facts concerning the several prior combination patents. To such a legal conclusion any statutory presumption of validity must yield.

Such a presumption may only be given effect in cases where there is a dispute as to issues of fact, the resolution of which may determine the validity or invalidity of a patent. It cannot affect any conclusion of law which must inexorably follow from resolved or undisputed facts. As stated in Vol. 31A C.J.S. page 195:

> "Presumptions are indulged in only to supply facts, and do not arise where the facts are known. * * *"

See also:

Ryan Distrib. Corp. v. Caley, 147 F.2d 138 (C.C.A. 3, 1945) c.d. 325 U.S. 859;

Damrow Bros. Co. v. Stoelting Bros. Co., 295 Fed. 492 (C.C.A. 7, 1924) citing *Richards v. Chase Elevator Co.,* 158 U.S. 299, 15 S. Ct. 831 (1895).

On the undisputed facts before the Court of Appeals in the case at Bar, there was, thus, *no* effect to be given to the statutory presumption of validity. As a matter of law there was either no infringement or the patent-in-suit was invalid for overclaiming.

Conclusion.

Upon the basis of the foregoing, respondent submits that the Petition for a Writ of Certiorari herein sought should be denied.

Respectfully submitted,

WILLIAM H. PAVITT, JR.,
Attorney for Respondent.

Of Counsel:

GEORGE F. SMYTH.

APPENDIX I.

Selected Sections From the Patent Codification Act of 1952 (Title 35 United States Code).

§ 101. *Inventions patentable*

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

§ 102. *Conditions for patentability; novelty and loss of right to patent*

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

§ 103. *Conditions for patentability; non-obvious subject matter*

A patent may not be obtained through the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

§ 112. *Specification*

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming

the subject matter which the applicant regards as his invention. A claim may be written in independent or dependent form, and if in dependent form, it shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim.

An element in a claim for a combination may be expressed as a means or step for performing a specified question without the recital of structure material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. (Amended July 24, 1965, Public Law 89-83, sec. 9, 79 Stat. 261.)

§ 271. *Infringement of patent*

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever sells a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his

having done one or more of the following: (1) derived revenue from acts which is performed by another without his consent would constitute contributory infringement of the patent; (2) licensed or authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) sought to enforce his patent rights against infringement or contributory infringement.

§ 282. *Presumption of validity; defenses*

A patent shall be presumed valid. Each claim of a patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it.

The following shall be defenses in any action involving the validity or infringement of a patent and shall not be pleaded;

(1) Noninfringement, absence of liability for infringement, or unenforceability,

(2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,

(3) Invalidity of the patent or any claim in suit for failure to comply with any requirement of sections 112 or 251 of this title,

(4) Any other fact or act made a defense by this title.

In actions involving the validity or infringement of a patent the party asserting invalidity or noninfringement shall give notice in the pleadings or otherwise

in writing to the adverse party at least thirty days before the trial, of the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Court of Claims, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit. In the absence of such notice proof of the said matters may not be made at the trial except on such terms as the court requires. (Amended July 24, 1965, Public Law 89-83, sec. 10, 79 Stat. 261.)